

A GUIDE FOR NOTARIES PUBLIC PRACTICING IN MONTANA



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Montana Notary Public

This handbook has been prepared by the office of the Secretary of State for current and prospective notaries public in the State of Montana to provide information on how to become a notary public and to help them better understand the powers and duties of that office. If you have questions that this booklet does not answer, you may call the Secretary of State's Notary department at 406-444-5379 or 406-444-1877. *Any statements by the office of the Secretary of State regarding notaries or notarial acts are not intended as legal advice and should not be construed as such. If you have specific legal questions regarding your acts or conduct as a notary, the Secretary of State's office urges you to seek professional legal advice.*

A Public Official

The notary public is a public official appointed by the Secretary of State through the power vested in the Secretary by state law. The notary has the power to administer oaths, take acknowledgments and perform other duties as permitted by law. It is very important that notaries always remember the public nature of the office they hold. It is the duty of all notaries to serve the public, and *they may not unreasonably refuse to perform a notarial act for any member of the public who tenders the statutory fee and meets all requirements prescribed by statute.* However, notaries must also take precautions not to exceed the power of their office.

Integrity and skill are required of a notary in the discharge of their duties, for the mere mechanical performance of their office does not insure that added degree of authenticity that is the hallmark of the notarial act. Any person requesting any information of a legal nature should consult an attorney.

The Notary's Function

A notary acts as an official, unbiased witness to the **identity and signature of the person who comes before the notary** for a specific purpose. The person may be taking an oath, giving oral or written testimony, or signing or acknowledging his or her signature on a legal document. In each case, the notary attests that certain formalities have been observed.

The key function is to be certain that the person appearing before the notary is who that person claims to be.

The law defines certain "notarial powers" that a notary is empowered to perform. *Notaries must constantly be aware that every notarial act affects the legal rights of others. Carelessness or negligence by the notary may injure these rights. Upon conviction of a violation of rights, the notary will be punished as provided by law.*

The Notary's Greatest Responsibility

Before performing a notarial act, a notary must be certain of the identity of each person whose signature will be notarized.

A notary who fails to establish the identity of a person runs the risk of being sued for negligence or malfeasance in office and can be punished as provided by law.

The only safe practice is to refuse to notarize any signature unless the identity of the signer is clearly established. If the notary is personally acquainted with the person whose signature is to be notarized, there is no reason to require further identification. However, if the notary has any doubts about the person's identity, the notary should request *current, signed and pictured* identification sufficient to establish the person's identity. Examples of identification a notary may request would be a drivers license, a military ID, a passport, a government issued ID card or any other current, signed and pictured identification as deemed necessary (MCA 1-5-603 (6)).

A notary is required to exercise a high degree of care in determining the identity of any person whose identity is the subject of a notarial act. A good guideline is to require the same sort of identification you would ask for if you were to cash a stranger's personal check using your own money.

Again, if a notary has any doubt as to the authenticity of any signature or the identity of the signer, the only safe practice is to refuse to notarize the document.

Whose signature may a notary public notarize

A Montana notary public may notarize any signature, with the following exceptions: they may not notarize their own signature or a document that they are named in or will directly benefit from. (MCA 1-5-416(2)) If the notary is a stockholder, director, officer or employee of a bank or other corporation, they may take the acknowledgment of any party to any written instrument. However, if the notary is a party to the instrument, it is unlawful for them to take such an acknowledgment. (MCA 1-5-417)

When changes occur in the notary's name, residence or employment

Notaries are required by law to file their residence/employment address and phone numbers with the Secretary of State. If the notary changes their name, the notary or the notary's bonding company must send the Secretary of State a rider (bearing the notary's new original signature) which will be attached to the original bond. If the notary has a change of address and/or phone number for either their place of residence or employment, they must submit the change in writing, bearing their current original official signature, to the office of the Secretary of State. Notification will be mailed when the changes have been filed with the Secretary of State's office. A new seal is required for any name change, since the notarial signature, commissioned name and the seal must be identical.

Appointment as a notary public

The Secretary of State appoints an individual as a notary public for a term of four years. The Secretary of State may appoint and commission as many notaries as the Secretary deems best and may revoke any commission for just cause. A Montana notary public has jurisdiction to perform official duties and acts in every county of the state of Montana irrespective of the notary's place of residence within the state. A Montana notarial officer may perform a notarial act in a bordering state if the state recognizes the officer's authority within the state. (MCA 1-5-604)

Powers and duties

A Montana notary public is empowered to:

- ◆ take acknowledgments and give a certificate of the same;
- ◆ take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations as allowed by statute;
- ◆ make and give certified copies of any record that was issued in or filed in the notary's place of employment;
- ◆ provide and keep an official seal (crimper or ink stamp); and
- ◆ authenticate all official acts with the official seal.

The notary must deposit all of their notarial records with the county clerk where they reside, if they resign or are removed from office, move from the state, or if their term of commission expires and they don't wish to renew their commission.

Notary Public Journals

Montana State Law does not require that Montana notaries maintain a journal of their notarial acts. However, it is the very strong recommendation of the Office of the Secretary of State that they do so. The journal is a record of the notarial acts performed and could be vital in protecting the notary from possible liability. The journal should be a bound book to prevent the loss of pages, and the notary should record the following information for each transaction: 1) date and time of the notarial act; 2) nature or type of notarial act performed; 3) description of the document; 4) signature, printed name and address of each person for whom a notarial act is performed (thumb printing is optional); 5) method by which a person's identity has been determined; 6) fee, if any charged; and 7) place where notarial act was performed.

The official seal and authentication

It is the responsibility of the notary to obtain and keep an official seal. The official seal of a Montana notary public must bear: the notary's name exactly as it appears on their certificate of commission, the words "**Notarial Seal**" and "**State of Montana**". The official seal may be either the crimper-type or ink stamp seal, and it may be purchased from most stamp-work shops or office supply stores.

Any time the notary signs a document officially as a notary public, they must complete a full notarial block including the following below their original official signature:

Notary's commissioned name: legibly typed, stamped or printed
Notary's official title (usually): Notary Public for the State of Montana
Notary's town/city of residence: Residing at
Notary's commission exp date: My Commission Expires: mo/day/four digit year

These words must be legibly printed by hand, typed or stamped on all documents and must reflect the notary's city/town of residence (not employment if different). If a stamp is to be used containing the expiration date of the commission, it should not be ordered until the date of expiration has been confirmed with the Secretary of State's office, or the commission certificate with the expiration date has been received.

A Montana notary public may file a copy of their certificate of commission with the county clerk and recorder for the purpose of authentication. (This filing is not mandatory, thus it is optional for the notary.)

Penalties

For official misconduct or negligence in the role as a notary public, the notary (personally) and the surety of the official bond

are liable to the parties injured for all damages sustained.

SIMPLIFIED NOTARY TERMS

Acknowledgment: Signer *personally appears* before the notary and acknowledges that he/she willingly signed the document for the purposes for which the document is intended. (The notary does not have to actually see the person sign the document.)

Affirmation: Oral promise, on one's personal honor, that the information given is true and accurate to the best of the signer's knowledge. Also known as an oath.

Affidavit: A written statement signed before a notary in which the person swears to the notary that the statement is true.

Apostille: A certificate of notarial authority issued by the Secretary of State. Certifies that the notarial block is completed according to Montana statutes and that the notary is a notary public in good standing. This type of certification is required for documents used in foreign countries which belong to the Hague Convention of October 5, 1961.

Attorney-in-fact: A person (does not have to be a lawyer) who is given written permission to sign and/or act on the behalf of another individual (the principal), normally through a document called a power of attorney.

Authentication: A certificate of notarial authority issued by the Secretary of State. Certifies that the notarial block is completed according to Montana statutes and that the notary is a notary public in good standing. This type of certification is used for documents going to foreign countries that *do not* require an Apostille.

Certified Copy: An exact, complete and unaltered copy of a document, signed as a true copy of the original document held in the office of the public official. Public officials should not certify copies of documents that are not held in their office, as they do not have knowledge as to whether the original document has been altered. Montana notaries public can not certify copies of any document that was not issued or filed in their place of employment or where the original document is held in a public office (birth certificates, marriage certificates, etc.).

Coercion: Forced or compelled into doing something, through fear, intimidation and/or threats. A notary should refuse to notarize a document if all parties are not willingly involved.

Competence: The ability to understand. A notary should be comfortable that all parties understand what they are signing and/or attesting to.

Credible witness: Someone who is *personally* known to the notary and who swears or affirms to the identity of a person signing and/or attesting to a document who is unknown to the notary.

Deposition: A written statement used in legal matters that is transcribed from an oral oath or affirmation and is usually signed by the person giving the oath or affirmation.

Forgery: False signature, written document or other creation made to imitate the true signature, document or creation. The act of making the false signature, document, or creation.

Jurat: Notarial act that certifies having witnessed the signing of a document and administered an oath or affirmation, in which the signer declares the documents to be truthful and accurate.

L.S.: Abbreviation of the Latin term *locus sigilli*, meaning "place of seal." Traditionally used to indicate

where the official seal is to be imprinted or stamped.

Medallion signature guarantee: Normally requested to verify/guarantee signatures on stocks and bond transactions. This type of guarantee is performed by an eligible guarantor institution such as a commercial bank, trust company, security broker or dealer, participating in a medallion program approved by the Securities Transfer Association, Inc. No other forms of signature verification should be accepted. *Medallion Signature Guarantee should not be performed by a Montana notary public unless he/she has also been approved by the Securities Transfer Association, Inc.*

Notarial certificate/block: The written notarial acts of a notary. The notarial block should contain all of the following parts: 1. The venue (state and county the notarial act is being performed in). 2. The date the notarization took place. 3. The declarative wording (type of notarial act performed). 4. The notary's original/official signature. 5. The notary's official name (clearly typed, stamped or printed). 6. The words "Notary Public for the State of Montana" (or other title that gives the person the authority to perform the notarial act). 7. Residing at (town of residence not employment). 8. Commission expiration (mo/day/four digit year). 9. The notary's official seal.

Notary Public: A public ministerial officer, also an agent of the state. Appointed by the Secretary of State to serve the public, as an impartial party to a document, to deter fraud, with duties specified by law.

Notarial Seal: Official seal of a notary. In Montana the seal can be either an embosser (crimper) or an ink stamp. However it must contain the following: 1. The notary's name exactly as it appears on his/her certificate of commission. 2. The words "Notarial Seal." 3. The words "State of Montana."

Negligence: Failure to use reasonable care that would be expected of any other person in a similar situation.

Oath: A statement of truth, either written or verbal, given under penalty of perjury.

Perjury: Making a false statement under oath. Generally punishable by fine and/or imprisonment.

Reasonable care: The use of ordinary prudence and intelligence exercised in similar circumstances. Failure to use reasonable care is negligence.

SS. or SCT: Abbreviation of the Latin word *scilicet* (to wit), meaning "in particular" or "namely." Traditionally included to the right of the venue in a notarial block.

Signature guarantee: Commonly used in the transfer of stock securities and sometimes for the execution of mortgages and other loan transactions. This type of certification is performed by an officer of a financial institution or a bona fide stock brokerage house. The financial institution or brokerage house can be liable for any and all damages to an innocent party who reasonably relied upon the signature guarantee.

Subscribe: To sign.

Swear: To take an oath.

Subscribing witness: An individual, personally known to the notary, who swears or affirms having witnessed the signing of a document by another individual who cannot appear before the notary.

Venue: The location (state and county) where a notarization was performed. A requirement in a notarial block.

Montana Code Annotated (MCA)

The MCA is subject to additions, deletions and/or changes by legislation. The office of the Secretary of State is not able to mail current updates to Montana notaries public. Therefore, it is your responsibility to keep informed of the current law regarding Montana notaries public.

1-5-301. Who may prove execution of instrument. Proof of the execution of an instrument which has not been acknowledged may be made by:

- (1) all of the parties who executed it or any one of them;
- (2) a subscribing witness; or
- (3) other witnesses in cases mentioned in 1-5-302.

1-5-302. When execution may be proved by handwriting. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

- (1) when the parties and all the subscribing witnesses are dead;
- (2) when the parties and all the subscribing witnesses are nonresidents of the state;
- (3) when the place of their residence is unknown to the party desiring the proof and cannot be ascertained by the exercise of due diligence;
- (4) when the subscribing witness conceals himself or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpoena or attachment; or
- (5) in case of the continued failure or refusal of the witness to testify for the space of 1 hour after his/her appearance.

1-5-303. Facts which must be shown when offering proof of handwriting. The evidence taken under 1-5-302 must satisfactorily prove to the officer the following facts:

- (1) the existence of one or more of the conditions mentioned in 1-5-302;
- (2) that the witness testifying knew the person whose name purports to be subscribed to the instrument as a party and is well acquainted with his/her signature;
- (3) that the witness testifying personally knew the person who subscribed the instrument as a witness and is well acquainted with his/her signature;
- (4) that the signature or signatures in question are genuine; and
- (5) the place of residence of the witness.

1-5-304. Powers of officer taking proof of execution. Officers authorized to take the proof of instruments are authorized in such proceedings to:

- (1) administer oaths or affirmations as prescribed by law;
- (2) employ and swear interpreters; and
- (3) issue subpoenas as prescribed by law.

1-5-305. Contents of certificate of proof. An officer taking proof of the execution of any instrument must, in his/her certificate endorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

1-5-401. Appointment. The secretary of state may appoint and commission as many notaries public for the state of Montana as in the secretary of state's judgment may be deemed best.

1-5-402. Qualifications -- residence. A person appointed as notary public may not, at the time of appointment, be a convicted felon. Each person appointed as a notary public must be a resident of Montana for at least 1 year immediately preceding appointment, and must continue to reside within the state of Montana. Removal from the state or conviction of a felony vacates the office and is equivalent to resignation.

1-5-403. Term of office --limit on commissions. (1) The term of office of a notary public is 4 years from the date of commissioning.

(2) A person may not have more than one Montana notary public commission in effect at one time.

1-5-404. Penalties -- revocation of commission -- prosecution for violation of law.

(1) Upon 10 days' notice, the secretary of state may revoke the commission of a notary public for just cause.

(2) The county attorney of a county in which a violation of this chapter or another law applicable to notaries public or notarial acts occurs shall prosecute the violation.

1-5-405. Bond and commission -- dates -- fees and documents. (1) Each notary public shall submit an application, a signed oath of office, and an official bond in the amount of \$10,000 for each 4-year term of office. The application and bond must be approved by the secretary of state. Upon the approval of the application and the bond, the payment of fees, and the filing in the office of the secretary of state of the official oath of the notary public, the secretary of state may issue a commission.

(2) The effective date of the surety bond and the notary commission must be the same.

(3) All required fees and required and properly completed documents must be submitted to the office of the secretary of state within 30 days before or within 30 days after the effective date of the surety bond.

1-5-406. Liabilities on official bond. For the official misconduct or neglect of a notary public, he and the sureties on his official bond are liable to the parties injured thereby for all damages sustained.

1-5-407. Certifying the official character of a notary. The secretary of state may certify to the official character of such notary public. Any notary public may file a copy of his/her commission in the office of any county clerk of any county in the state, and thereafter said county clerk may certify to the official character of such notary public.

1-5-408. Fees for filing or amending commission and issuing certificates. The secretary of state shall set by rule the fees for filing or issuing, in the manner provided for in 1-5-407, certificates. The secretary may charge a fee for changes made in the commission of a notary public, during the term of that commission, regarding the notary's name, residential address, business address or residential or business telephone number. The fees must be commensurate with costs. The secretary of state shall use application forms soliciting the information required by this part. The county clerk of any county in this state must receive a fee as provided in 7-4-263, for filing a copy of the commission and certifying to the official character.

1-5-409. Information to be filed--amendments to commission. (1) A person appointed as a notary public shall file the person's business, if any, and residential addresses and telephone numbers with the office of the secretary of state. If the notary public changes the notary's address or telephone number during the notary's term of commission, the notary shall notify the office of the secretary of state, in writing, and shall sign the writing using the same signature that is used for notarial acts.

(2) A notary public wishing to change the notary's name during the notary's term of commission, shall file with the secretary of state a rider or other document from the notary's surety company showing the change of name. The notary public shall also file with the secretary of state a written example of the notary's new official signature.

1-5-415. Jurisdiction. A person receiving a commission as notary public has jurisdiction to perform the person's official duties and acts in every county of the state of Montana irrespective of the person's place of residence within the state. A notary public may perform notarial acts outside Montana pursuant to 1-5-605.

1-5-416. Powers and duties. (1) A notary public shall:

(a) subject to subsection (2), take the acknowledgment or proof of any power of attorney, mortgage, deed, grant, transfer, or other instrument executed by any person and give a certificate of the proof or acknowledgment, endorsed on or attached to the instrument;

(b) take depositions and affidavits, if the notary is knowledgeable of the applicable legal requirements, and administer oaths and affirmations in all matters incident to the duties of the notary public's office or to be used before any court, judge, officer, or board in this state;

(c) whenever requested and upon payment of the required fees, make and give a certified copy of any record kept or that originated in the notary public's place of employment;

(d) provide and keep an official crimper-type or ink stamp seal, upon which must be engraved the name of the state of Montana and the words "Notarial Seal", with the name of the notary public exactly as that name appears on the notary's certificate of commission issued by the secretary of state;

(e) authenticate with the notary public's official seal and the notary's original signature as it appears on the notary's certificate of commission, all official acts. Whenever the notary public signs officially as a notary public, the notary public shall add to the signature the words "Notary Public for the State of Montana, residing at.... (stating the name of the town or city of the notary public's post office)" and shall endorse upon the instrument the date, showing the month, day and four-digit year, of the expiration of the notary public's commission.

(f) on every document on which the notary's seal of office is used, type, stamp or legibly print the notary's name, as shown on the notary's certificate of commission, after or below the original signature of the notary.

(2) A notary public may not:

(a) notarize the notary's own signature;

(b) notarize a document in which the notary is individually named or has an interest from which the notary will directly benefit by a transaction involving the document; or

(c) certify a document issued by a public entity, such as a birth, death, or marriage certificate, unless the notary is employed by the entity issuing or holding the original version of that document.

1-5-417. Authority of notaries who are stockholders, officers, or employees of banks or other corporations. (1) Except as provided in this section, a notary public who is a stockholder, director, officer, or employee of a bank or other corporation may:

(a) take the acknowledgment of a party to a written instrument executed to or by that bank or corporation;

(b) administer an oath to any other stockholder, director, officer, employee, or agent of that bank or corporation; or

(c) protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments that may be owned or held for collection by that bank or other corporation.

(2) A notary public who is a stockholder, director, officer or employee of a bank or other corporation and is individually named in an instrument or signs an instrument as a representative of the bank or other corporation may not:

(a) take the acknowledgment of that instrument by or to that bank or other corporation; or

(b) protest a negotiable instrument owned or held for collection by that bank or other corporation.

(3) A notary public who violates this section is guilty of a misdemeanor and upon conviction must be punished as provided by law.

1-5-418. Maximum fees of notaries. Maximum fees of notaries public are as follows:

(1) for drawing an affidavit, deposition, or other paper for which a maximum fee is not otherwise specified, \$3.50 a page;

(2) for taking an acknowledgment or proof of a deed or other instrument, including the seal and the writing of the certificate, for the first signature, \$5;

(3) for each additional signature of the same person as referred to in subsection (1), \$1;

(4) for administering an oath or affirmation, \$5;

(5) for certifying an affidavit, with or without seal, including oath, \$5 and

(6) for mileage or other charge to travel to or from or to and from the place of the notarial act, the

amount provided by law for state employees when using the same mode of travel and traveling on state business.

1-5-419. Transfer of records upon termination of office. It is the duty of every notary public on his/her resignation or removal from office or at the expiration of his/her term and, in case of his/her death, of his/her legal representative to forthwith deposit all the records kept by him in the office of the county clerk of the county in which he was resident. On failure to do so, the person so offending is liable to damages to any person injured thereby.

1-5-420. Powers and duties of clerk with whom records deposited. It is the duty of each clerk aforesaid to receive and safely keep all such records and papers of the notary in the case above named and to give attested copies of them under his/her seal, for which he may demand such fees as by law may be allowed to the notaries, and such copies shall have the same effect as if certified by the notary.

1-5-601. Short title. This part may be cited as the "Uniform Law on Notarial Acts".

1-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated in the instrument and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the instrument.

(2) "In a representative capacity" means:

(a) for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent, partner, trustee, or other representative;

(b) as a public officer, personal representative, guardian, or other representative in the capacity recited in the instrument;

(c) as an attorney in fact for a principal; or

(d) in any other capacity as an authorized representative of another.

(3) "Notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(4) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

(5) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

1-5-603. Notarial acts. (1) In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(2) In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(3) In witnessing or attesting a signature, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument.

(4) In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(5) (a) In making or noting a protest of a negotiable instrument, the notarial officer shall identify the instrument and certify either:

(i) that due presentment has been made; or

(ii) the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(b) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(6) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

(a) personally known to the notarial officer;

(b) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(c) identified on the basis of a current identification document or documents that show a photograph and signature of the person.

1-5-604. Notarial acts in this state. (1) A notarial act may be performed within this state by the following persons:

- (a) a notary public of this state;
- (b) a judge, clerk, or deputy clerk of any court of this state; or
- (c) any other person authorized to perform the specific act by the law of this state.

(2) Notarial acts performed within this state under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.

(3) Subject to the provisions of 1-5-605, notarial acts performed within Montana by notarial officers of bordering states have the same effect as if performed by a notarial officer of Montana.

(4) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

1-5-605. Reciprocity of notarial acts. (1) A Montana notarial officer may perform a notarial act in a bordering state if the state recognizes the officer's authority within the state.

(2) A notarial act performed in Montana by a notarial officer of a bordering state has the same effect under Montana law as if the act were performed by a Montana notarial officer, provided that the bordering state grants Montana's notarial officers similar authority within the bordering state.

1-5-606. Notarial acts in other jurisdictions of the United States. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (a) a notary public of that jurisdiction;
- (b) a judge, clerk, or deputy clerk of a court of that jurisdiction; or
- (c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in 1-5-607 have the same effect as if performed by a notarial officer of this state.

(3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) The signature and indicated title of an officer listed in subsection (1)(a) or (1)(b) conclusively establish the authority of a holder of that title to perform a notarial act.

1-5-607. Notarial acts under federal authority. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed anywhere by any of the following persons under authority granted by the law of the United States:

- (a) a judge, clerk, or deputy clerk of a court;
- (b) a commissioned officer on active duty in the military service of the United States;
- (c) an officer of the foreign service or consular officer of the United States; or
- (d) any other person authorized by federal law to perform notarial acts.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and indicated title of an officer listed in subsection (1)(a), (1)(b), or (1)(c) conclusively establish the authority of a holder of that title to perform a notarial act.

1-5-608. Foreign notarial acts. (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- (a) a notary public or notary;
- (b) a judge, clerk, or deputy clerk of a court of record; or
- (c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "Apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively

established.

1-5-609. Certificate of notarial acts. (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed, the date on which the notarial act is performed, the type of notarial act being performed, and the title of the office of the notarial officer and must include the official seal of office. If the officer is a Montana notary public, the certificate must also indicate the place of the notarial officer's residence and the date of expiration of the commission of office, but omission of that place or date may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and it:

(a) is in the short form set forth in 1-5-610;

(b) is in a form otherwise prescribed by the law of this state;

(c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by 1-5-603.

1-5-610. Short forms. The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by 1-5-416 and 1-5-609(1):

(1) For an acknowledgment in an individual capacity:

State of _____
(County) of _____

This instrument was acknowledged before me on date by (name(s) of person(s)).

(Seal)

(Signature of notarial officer)

Notary's name - typed, stamped or printed

Title (and Rank)

Residing at
[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____
(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Seal)

(Signature of notarial officer)

Notary's name - typed, stamped or printed

Title (and Rank)

Residing at
[My commission expires: _____]

(3) For a verification upon oath or affirmation:

State of _____
(County) of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement) . (date)

(Seal)

(Signature of notarial officer)

Notary's name - typed, stamped or printed

Title (and Rank)

Residing at

[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____
(County) of _____
(date)

Signed or attested before me on (date) by (name(s) of person(s)) .

(Seal)

(Signature of notarial officer)

Notary's name - typed, stamped or printed

Title (and Rank)

Residing at

[My commission expires: _____]

(5) For attestation of a copy of a document:

State of _____
(County) of _____

I certify that this is a true and correct copy of a document in the possession of _____.
Dated _____

(Seal)

(Signature of notarial officer)

Notary's name - typed, stamped or printed

Title (and Rank)

Residing at

[My commission expires: _____]

1-5-611. Uniformity of application and construction. This part must be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of this part among states enacting it.

For further information

If you or the notary have any questions about the duties and responsibilities of a Montana notary public, or if the notary needs to inform us of a change in their address, our contact information is as follows:

Secretary of State
Notary Division
PO Box 202801
Helena MT 59620-2801
406-444-5379
406-444-1877
406-444-2023 (fax)
e-mail: sosnotary@state.mt.us

Other (non-profit) sources of information about notaries are:

National Notary Association
PO Box 2402
Chatsworth CA 91313-2402
(800) US NOTARY or (800) 876-6827

The American Society of Notaries
PO Box 5707
Tallahassee FL 32311
(800) 552-3392

Notaries may also want to read the book Public, practices & glossary by Raymond C. Rothman for information on the history, duties and responsibilities of notaries.

INSTRUCTIONS TO APPLICANTS FOR NEW and RENEWAL NOTARY PUBLIC COMMISSIONS

Required documents are: Montana Notary Public Application, Notary Public Surety Bond, Oath of Office of Notary Public, and the filing fee. We are unable to process a notary public commission if all the required documents are not properly completed and submitted to this office at the same time. ***If the documents are not submitted as required, they will be returned for correction and the application process will be delayed.***

APPLICATION INSTRUCTIONS: (The application form for new and renewals is the same.)

1. Applications may be obtained from most insurance companies, from our web site (sos.state.mt.us), or by request from the office of the Montana Secretary of State.
2. The applicant's typed/printed name and signature on the application, bond, and oath of office "**MUST BE EXACTLY THE SAME**". This is the name that the commission will be issued in. Thus, this is the name that must be used when ordering the official notarial seal and when officially signing all notarial acts.
3. Applicant's place of residence (city and county) must correspond with the city and county listed on the surety bond. (*When performing notarial acts you must use the city/town where you reside, not where you work.*)
4. An applicant can only list the same information for residence and employment, if their employment is at the same physical address as their residence. If this is the case, they must state "work at home address" on the application. If the applicant does not work at home, but does not received mail at the home address; they should list it and note "no mail at this address". If the applicant is not presently employed, please enter "N/A" in the space provided for employer information.
5. Failure to complete a current application truthfully and fully can result in denial or revocation of a Notary Commission. (*Application must be properly notarized.*)

BOND INSTRUCTIONS:

1. The bond can be obtained from most insurance companies authorized to sell insurance in Montana. The official bond must be in the sum of \$10,000, written for a term of four years. The bond must be executed by a surety company authorized to write surety bonds in the State of Montana. The surety bond must be properly signed by the applicant (*also known as the principle of the bond*).
2. A notary public bond is for a four-year term, extending from the commencement date to the expiration date of the notary's commission. Thus, *the effective date of the surety bond must be within 30 days of the date the Secretary of State's office receives it for filing.*
3. Surety bonds for a renewal commission cannot bear an effective date prior to the applicant's current notary public commission expiration date.
4. ***Important.*** A notary Bond is not insurance for the notary but protection for the public. A notary must repay the surety any funds the surety company pays out on the notary's behalf. (*Errors and Omissions Coverage is not mandatory, however you may wish to consider this option.*)

OATH OF OFFICE INSTRUCTIONS:

1. The Oath of Office for a notary public is usually included as part of the surety bond form. (*May be on front or back of the form.*) If not included as part of the bond they are available on our web site (sos.state.mt.us) or by request from the office of the Montana Secretary of State.
2. The oath must be completed by the applicant before a notary public. (*The oath must be properly notarized.*)

FEE INSTRUCTIONS:

1. The filing fee for a commission as a notary public (new or renewal) commission is \$25.00. Personal checks, cashiers checks or money orders are to be made payable to the Montana Secretary of State. (**Your commission will be suspended if your payment is returned to us for any reason.**)

MAIL COMPLETED APPLICATION, BOND AND FEE TO:

Montana Secretary of State
Notary Division
PO Box 202801
Helena MT 59620-2801

Upon approval of the application, bond and oath of office, the Secretary of State will issue a commission. The Secretary of State's office will then mail a certificate of commission and the "Guide for Notary Publics Practicing in Montana." At this time the notary must obtain an official seal in order to carry out their duties as a notary. (Read: **The official seal and authentication** section carefully before obtaining a seal.) If you have any questions regarding the application procedures or the duties of a Montana notary public, please call our office at (406)444-5379 or 406-444-1877.

(For use by the Secretary of State only)



STATE OF MONTANA
Montana Secretary of State
Montana State Capitol Bldg.
P. O. Box 202801
Helena, MT 59620-2801
(406)444-5379

APPLICATION FOR A COMMISSION AS A NOTARY PUBLIC

Name _____
(Exactly as listed on bond) LAST FIRST MIDDLE/INITIAL HOME PHONE

Residence Address _____
STREET/Box# CITY STATE ZIP

Employer Name _____
WORK PHONE

Employer Address _____
STREET/Box# CITY STATE ZIP

Social Security# _____ Date of Birth _____ Have you ever been issued a commission
as a Notary Public in Montana? **YES** **NO**

If yes, please indicate date of commission expiration _____. Name under which previous commission was issued

State of Montana
County of _____

On this _____ day of _____, 20____; I, _____, do solemnly swear that:

1. I have been a resident of Montana for at least 1 year preceding the date on this application.
2. I am at least 18 years of age.
3. I have never been convicted of a felony.
4. I have never had a Notary Public commission denied, revoked or restricted in any state.
5. The information on this application is true and complete to the best of my knowledge.
6. I am qualified to be appointed and commissioned as a Notary Public for the State of Montana.

(SEAL)

Applicant (signature) _____

Subscribed & Sworn to before me this _____ day of _____, 20_____.

Notary Public (signature) _____

Notary Public (name typed/stamped or clearly printed) _____

Residing at: _____

Commission expiration _____

Quick Reference for proper notarizations performed by Montana Notaries Public.

Montana Code Annotated (MCA) requires a Montana notary public to complete a full notarial block each and every time a notarial act is performed, even when the form does not ask for all the information.

The following are the steps that must be completed each and every time:

1. The venue - this is the state and county in which the notarial act was performed. *This is not always the state and county in which the notary resides in.*
2. The date the notarial act was performed. *This may not always be the same date that the document was completed and/or signed.*
3. A written description of what type of notarial act the notary performed. *The notary may need to refer to MCA 1-5-610, in their notary guide, to help with the wording and format.*
4. The notary's official signature, not a facsimile of their signature. *The official name on the Notarial Seal and the notary's official signature must correspond with the notary's commissioned name on file with the Office of the Secretary of State.*
5. The notary must type, stamp or print their official name legibly after their official signature. *This is in addition to their official name contained in their notarial seal.*
6. The official's title that is performing the notarial act. *If a commissioned notary it would be "Notary Public for the State of Montana". If not a commissioned notary, it would be their official title that gives them the authority to notarize documents in and for the State of Montana.*
7. The words "residing at" and the notary's city/town of residence. *Not where the notary works or where the notarial act is being performed.*
8. The notary must also endorse the instrument with their current commission expiration date using month, day & full four digit year. *The notary should make sure they are using the expiration date referenced on their certificate of commission.*
9. The notary must affix their official "Notarial Seal". *A commissioned notaries official seal must bear the their name, exactly as it appears on their Certificate of Commission, the words "Notarial Seal" and "State of Montana". If not a commissioned notary then the official seal would be that of the office that gives the notary the authority to notarize in and for the State of Montana.*

Our office provides each Montana notary public with a handbook for their reference. This handbook contains the MCA as it pertains to Montana notaries public, including examples of short form notarial blocks.

SAMPLE NOTARIAL BLOCK: (For other examples see MCA 1-5-610 in the notaries handbook; "A Guide For Notaries Public Practicing in Montana".)

State of: Montana
County of: county notarial act is being performed in

Signed and sworn to before me this ?? day of Month, 20 ; by name of person(s)
appearing before the notary public.

(seal)

Signature of notary public
Typed, stamped or printed name of notary
Notary Public for the State of Montana
residing at: town of residence not employment
My commission expires: month, day & four digit year

FACTS TO REMEMBER

- * A Montana notary public **must** be 18 years of age, a resident of Montana for at least a year immediately preceding the date of their application, may not be a convicted felon and must continue to reside within the state of Montana for the duration of their term. Removal from the state or conviction of a felony vacates the office and is equivalent to resignation.
- * The appointment of a Montana notary public is made by the Montana Secretary of State.
- * An application for a notarial appointment will be denied based on the applicant's conviction of a felony offense; on any revocation, suspension, or restriction of a notarial commission issued to an applicant in this or any other state; or on an applicant's official misconduct while acting in the capacity of a notary public.
- * The filing fee for a Montana commission as a notary public is \$25.00.
- * The term of office for a notary public is four years, unless sooner revoked or terminated by voluntary resignation.
- * A bond must be secured in the sum of \$10,000 with a surety approved by the state. No company may do a surety business in this state unless authorized by its charter and qualified with the Insurance Department of the State of Montana.
- * A Montana notary may act as such anywhere in the state and in a bordering state if the state recognizes the officer's authority within the state.
- * A Montana notary public must keep an official notarial seal (for the purpose of authenticating official acts) that, when affixed, makes an impression that includes the notary public's name exactly as indicated on the certificate of commission, the words "**NOTARIAL SEAL**" and "State of Montana." The notary public must also after his/her official signature, legibly type, stamp or print his/her official name and affix the words "Notary Public for the State of Montana, residing at...(stating the name of notary's post office)" and "my commission expires" (commission expiration date including the mo/day/four digit year).
- * A notary public must affix their official *original* signature and seal on every notarized document. (Seal should be legibly placed in the closest open area next to the notary's signature without covering text or signature).
- * A notary public may execute within the state: acknowledgments, jurats, oaths and affirmations (if knowledgeable of the legal requirements for such documents) and make and give a certified copy of any record issued from or filed in their place of employment.
- * A notary public shall not notarize any document in which the notary is named or in which the notary has a direct or financial interest in.
- * A notary public may not notarize their own signature.
- * A notary public must not perform an illegal notarization even though the notary's employer requires it. The notary will be **personally** liable for such an act even though it was ordered by the employer.

____copies of this public document were published at an
estimated cost of ____ per copy, for a total cost of \$____,
which includes \$____ for printing and \$.00 for distribution .
